

1 Patrick S. Thompson (SBN 160804)
pthompson@goodwinprocter.com
2 Anna Hsia (SBN 234179)
ahsia@goodwinprocter.com
3 Audrey M. Lin (SBN 271671)
alin@goodwinprocter.com
4 **GOODWIN PROCTER LLP**
Three Embarcadero Center, 24th Floor
5 San Francisco, California 94111
Tel.: 415.733.6000
6 Fax: 415.677.9041

7 *Attorneys for Defendant*
Twilio, Inc., a Delaware Corporation
8

9
10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **OAKLAND DIVISION**

13 BRIAN GLAUSER, individually and on behalf
of all others similarly situated,

14 Plaintiff,

15 v.

16 TWILIO, INC., a Delaware corporation,
GROUPME, INC., a Delaware corporation,
17 Defendants.
18

Case No. CV11-2584 PJH

**AMENDED NOTICE OF MOTION TO
DISMISS FIRST AMENDED CLASS
ACTION COMPLAINT**

Date: January 25, 2012
Time: 9:00 a.m.
Courtroom: 3
Judge: Hon. Phyllis J. Hamilton

1 **AMENDED NOTICE OF MOTION TO DISMISS**

2 **FIRST AMENDED CLASS ACTION COMPLAINT**

3 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

4 PLEASE TAKE NOTICE that on January 25, 2012 at 9:00 a.m., or as soon thereafter as
 5 counsel may be heard in the above entitled court, before the Honorable Phyllis J. Hamilton, United
 6 States District Judge, in Courtroom 3, 3rd Floor, 1301 Clay Street, Oakland, CA 94612, defendant
 7 Twilio, Inc. ("Twilio") will and hereby does move the Court, for an Order dismissing with
 8 prejudice all claims asserted against it pursuant to Rule 12(b)(6) of the Federal Rules of Civil
 9 Procedure. Defendant seeks dismissal on grounds that plaintiff fails to state a plausible cause of
 10 action with the specificity required by *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and
 11 *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009). In the alternative, if the Court declines to dismiss the
 12 Complaint against Twilio, the Court should refer this matter to the Federal Communications
 13 Commission ("FCC") under the doctrine of primary jurisdiction.

14 Twilio's original Notice of Motion stated that the hearing would take place on
 15 November 30, 2011. *See* Dkt. #46. However, due to the Court's unavailability until early 2012,
 16 Twilio is re-noticing this motion for January 25, 2012.

17 \\\

18 \\\

19 \\\

20 \\\

21 \\\

22 \\\

23 \\\

24 \\\

25 \\\

26 \\\

27 \\\

28 \\\

1 The motion is based upon this Amended Notice of Motion; the Memorandum of Points and
2 Authorities filed on September 29, 2011; the Request for Judicial Notice filed on September 29,
3 2011; and the papers and pleadings on file with the Court, including any reply papers to be filed;
4 and such other written or oral argument as may be presented at the hearing on this Motion.

5
6 Dated: September 30, 2011

Respectfully submitted,

7
8 By: /s/ Patrick S. Thompson

Patrick S. Thompson

pthompson@goodwinprocter.com

9 Anna Hsia

ahsia@goodwinprocter.com

10 Audrey M. Lin

alin@goodwinprocter.com

11 **GOODWIN PROCTER LLP**

Three Embarcadero Center, 24th Floor

12 San Francisco, California 94111

13 Tel.: 415.733.6000

14 Fax: 415.677.9041

15 *Attorneys for Defendant*

16 *Twilio, Inc., a Delaware Corporation*

PROOF OF SERVICE

I, Stephanie M. Toribio, declare:

I am employed in the County of Suffolk, Massachusetts. I am over the age of 18 and not a party to the within action. My business address is Exchange Place, 53 State Street, Boston, MA 02109

On September 30, 2011, I served the following documents by placing a true copy thereof in a sealed envelope(s) on the persons below as follows:

AMENDED NOTICE OF MOTION TO DISMISS FIRST AMENDED CLASS ACTION COMPLAINT

Sean Patrick Reis
EDELSON MCGUIRE, LLP
30021 Tomas Street, Suite 300
Rancho Santa Margarita, CA 92688

Counsel for Plaintiff *BRIAN GLAUSER*
Tel. 949-459-2124
Fax. 949-459-2123
E-Mail: sreis@edelson.com

Christopher L. Dore
Jay Edelson
Rafey Sarkis Balabanian
EDELSON MCGUIRE, LLC
350 North LaSalle Street, Suite 1300
Chicago, IL 60654

Counsel for Plaintiff *BRIAN GLAUSER*
Tel. 312-589-6370
Fax. 312-589-6378
E-Mail: cdore@edelson.com
E-Mail: jedelson@edelson.com
E-Mail: rbalabanian@edelson.com

BRYAN A. MERRYMAN
WHITE & CASE LLP
633 W. Fifth Street, Suite 1900
Los Angeles, CA 90071-2007

Counsel for Defendant *GROUPME, INC.*
Tel. 213-620-7700
Fax. 213-452-2329
E-Mail: bmerryman@whitecase.com

J. JONATHAN HAWK
WHITE & CASE LLP
633 W. Fifth Street, Suite 1900
Los Angeles, CA 90071-2007

Counsel for Defendant *GROUPME, INC.*
Tel. 213-620-7700
Fax. 213-452-2329
E-Mail: jhawk@whitecase.com

JEREMY OSTRANDER
WHITE & CASE LLP
5 Palo Alto Square, 9th Floor
Palo Alto, CA 94306

Counsel for Defendant *GROUPME, INC.*
Tel: 650-213-0300
Fax: 650-213-8158
E-Mail: jostrander@whitecase.com

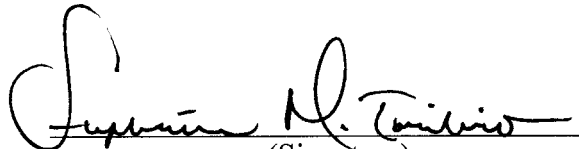
☐ (MAIL) I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at San Francisco, California.

- 1 ☒ (CM/ECF Electronic Filing) I caused the above document(s) to be transmitted to the
 2 office(s) of the addressee(s) listed above by electronic mail at the e-mail address(es) set
 3 forth above pursuant to Fed.R.Civ.P.5(d)(1). "A Notice of Electronic Filing (NEF) is
 4 generated automatically by the ECF system upon completion of an electronic filing. The
 5 NEF, when e-mailed to the e-mail address of record in the case, shall constitute the proof
 6 of service as required by Fed.R.Civ.P.5(d)(1). A copy of the NEF shall be attached to
 7 any document served in the traditional manner upon any party appearing pro se."
- 8 ☐ (EXPRESS MAIL) I placed the envelope for collection and mailing, following our
 9 ordinary business practices. I am readily familiar with this firm's practice for collecting
 10 and processing Express Mail for mailing. On the same day that Express Mail is placed
 11 for collection and mailing, it is deposited in the ordinary course of business with the
 12 United States Postal Service, in a post office, mailbox, sub-post office, substation, mail
 13 chute, or other like facility regularly maintained by the United States Postal Service for
 14 receipt of Express Mail.
- 15 ☐ (OVERNIGHT DELIVERY) I deposited in a box or other facility regularly maintained
 16 by Federal Express, an express service carrier, or delivered to a courier or driver
 17 authorized by said express service carrier to receive documents, a true copy of the
 18 foregoing document in sealed envelopes or packages designated by the express service
 19 carrier, addressed as stated above, with fees for overnight delivery paid or provided for.
- 20 ☐ (MESSENGER SERVICE) I served the documents by placing them in an envelope or
 21 package addressed to the persons at the addresses listed and provided them to a
 22 professional messenger service for service. A separate Personal Proof of Service
 23 provided by the professional messenger service will be filed under separate cover.
- 24 ☐ (FACSIMILE) Based on an agreement of the parties to accept service by fax
 25 transmission, I faxed the documents to the persons at the fax numbers listed. No error
 26 was reported by the fax machine that I used. A copy of the record of the fax
 27 transmission, which I printed out, is attached.
- 28 ☐ (E-MAIL or ELECTRONIC TRANSMISSION) Based on a court order or an agreement
 of the parties to accept service by e-mail or electronic transmission, I caused the
 documents to be sent to the persons at the e-mail addresses listed. I did not receive,
 within a reasonable time after the transmission, any electronic message or other
 indication that the transmission was unsuccessful.

I declare under penalty of perjury that I am employed in the office of a member of the bar
 of this Court at whose direction this service was made and that the foregoing is true and correct.

Executed on September 30, 2011, at Boston, Massachusetts.

Stephanie M. Toribio
 (Type or print name)


 (Signature)